

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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**Case No. A-5882**

**PETITION OF ROBERT AND ARLENE GOLDMAN**  
(Hearing held May 28, 2003)

**OPINION OF THE BOARD**  
(Effective date of Opinion, July 29, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a), 59-C-1.323(b)(2) and 59-C-1.323(b)(1).

The petitioners propose to construct a garage addition that requires variances of nineteen (19) feet as it is within six (6) feet of the front lot line and of fifteen (15) feet as it is within five (5) feet of the rear lot line.

The petitioners also propose to construct a two-story addition that requires variances of two (2) feet as it is within six (6) feet of the side lot line, of 30.75 feet as it is within twenty (20) feet of the established front building line and of twelve (12) feet as it is within eight (8) feet of the rear lot line. The proposed construction of a garage addition and a two-story addition exceeds the maximum lot coverage of 35% by 3%, which also requires a variance.

The required front lot line setback is twenty-five (25) feet, the required rear lot line setback is twenty (20) feet, the required side lot line setback is eight (8) feet, and the established front building line is 50.75 feet.

The subject property is Lot 10, Block 8, North Bethesda Grove Subdivision, located at 9907 Fleming Avenue, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 00599021).

Decision of the Board: Requested variances **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a two-story addition in the southern and western sections of the property and a garage addition in the eastern side yard.
2. The petitioners testified their property is a uniquely-shaped, shallow, corner lot and that new construction on the lot is limited to their side yards. The

petitioners received a prior variance to construct a one-story addition and a deck with steps and landing.

3. Mr. and Mrs. Romera, the adjoining neighbors on Lot 9, testified in opposition to the variance request. Mr. and Mrs. Romera testified that the new construction would bring the rear of the petitioners' home too close to their home.

### **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property and that the petitioners' lot size meets the minimum for the zone. The Board further finds that shape and size of the petitioners' lot is similar to other lots in the immediate neighborhood. See, Exhibit No. 8 (zoning vicinity map).

The petitioners failed to provide sufficient evidence of the practical difficulty that would be caused by the denial of the variance. Practical difficulty has been defined as a situation where the property, as a practical matter, cannot be used for a permitted use without coming in conflict with the restrictions of the setback ordinance. See 3 Rathkopf, The Law of Zoning and Planning, §38.04 (4<sup>th</sup> ed. 1997). The courts have defined this need as "sufficient to justify an exception [which] must be substantial and urgent and not merely for the convenience of the applicant." Carney v. City of Baltimore, 201 Md. 130, 137 (1952). The petitioners' evidence established that their need is based on personal convenience only.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. The requested variances of nineteen (19) feet from the required twenty-five (25) foot front lot line setback and of fifteen (15) feet from the required twenty (20) foot rear lot line setback for the construction of a garage addition are **denied**.

The requested variances of two (2) feet from the required eight (8) foot side lot line setback, of 30.75 feet from the required 50.75 foot established front building line and of twelve (12) feet from the required twenty (20) foot rear lot line setback for the construction of a two-story addition are **denied**. The requested variance of 3% to exceed the maximum lot coverage of 35% is **denied**.

The Board adopted the following Resolution:

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 29th day of July, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.